

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1976-AGR-E TCEQ ID: RN102334836 CASE NO.: 35068
RESPONDENT NAME: Postmus Dairy, L.L.C. dba Postmus Dairy

Page 1 of 3

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Postmus Dairy Farm, 2855 County Road 310, Erath County</p> <p>TYPE OF OPERATION: Dairy</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 9, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Henk Klaas Postmus, Owner/Registered Agent, Postmus Dairy, L.L.C. dba Postmus Dairy, 2855 County Road 310, Dublin, Texas 76446 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 12, 2007</p> <p>Date of NOE Relating to this Case: November 9, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to properly dispose of dead animals. Specifically, decaying animal carcasses were observed stockpiled [30 TEX. ADMIN. CODE § 321.36(l)].</p> <p>2) Failure to ensure that the control facility is designed, constructed, operated and maintained to contain all manure, litter and process water including runoff. Specifically, retention control structures ("RCS") No. 1 is designed to collect the barn water via pipe, at the time of the investigation, the barn water pipe was not connected and RCS No. 1 was receiving wastewater from approximately half the production area [30 TEX. ADMIN. CODE § 321.36(c) and TPDES General Permit No. TXG920299 Part V, Standard Permit Condition D].</p> <p>3) Failure to contain a discharge from a Land Management Unit ("LMU"). Specifically, wastewater was observed discharging from LMU No. 5 at the heifer production site and into a freshwater pond south of RCS No. 3 [30 TEX. ADMIN. CODE § 321.40(d) and TEX. WATER CODE § 26.121(a)]</p>	<p>Total Assessed: \$7,200</p> <p>Total Deferred: \$1,440 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$5,760</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) On September 12, 2007, a contracted rendering service removed the dead animals from the Facility; and</p> <p>b) On November 1, 2007, the Respondent submitted documentation of the dead animal management practices implemented at the Facility and submitted documentation demonstrating that the weekly inspections of the RCS are being conducted.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order:</p> <p>i. Repair the irrigation equipment at the LMU to ensure the integrity of the buffer zones and submit documentation demonstrating the remediation of the contaminated areas; and</p> <p>ii. Repair and reconnect the barn pipe to RCS No. 1.</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

4) Failure to conduct weekly inspections and document/record the pond levels at RCS No. 1 [30 TEX. ADMIN. CODE § 321.36(h)(2)].		
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Additional ID No(s): TXG920299



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ
DATES

Assigned 19-Nov-2007

PCW 7-Dec-2007

Screening 27-Nov-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Postmus Dairy, L.L.C. dba Postmus Dairy

Reg. Ent. Ref. No. RN102334836

Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 35068

Docket No. 2007-1976-AGR-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 4

Order Type 1660

Enf. Coordinator Cheryl Thompson

EC's Team Enforcement Team 3

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

15% Enhancement Subtotals 2, 3, & 7 \$600

Notes

The Respondent received five previous NOV's for non-similar violations and one NOV for same or similar violations.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6 \$0

*Capped at the Total EB \$ Amount

Total EB Amounts \$2,919

Approx. Cost of Compliance \$4,300

SUM OF SUBTOTALS 1-7

Final Subtotal \$4,600

OTHER FACTORS AS JUSTICE MAY REQUIRE

57%

Adjustment \$2,600

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Recommended upward adjustment in the penalty due to avoided cost associated with violation No. 4.

Final Penalty Amount \$7,200

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$7,200

DEFERRAL

20%

Reduction

Adjustment -\$1,440

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral is recommended.

PAYABLE PENALTY

\$5,760

Screening Date 27-Nov-2007

Docket No. 2007-1976-AGR-E

PCW

Respondent Postmus Dairy, L.L.C. dba Postmus Dairy

Policy Revision 2 (September 2002)

Case ID No. 35068

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102334836

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	5	10%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 15%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent received five previous NOVs for non-similar violations and one NOV for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 27-Nov-2007 Respondent Postmus Dairy, L.L.C. dba Postmus Dairy Case ID No. 35068 Reg. Ent. Reference No. RN102334836 Media [Statute] Water Quality Enf. Coordinator Cheryl Thompson Violation Number <input type="text" value="1"/> Rule Cite(s) <div style="border: 1px solid black; padding: 5px; text-align: center;">30 Tex. Admin. Code § 321.36(l)</div> Violation Description <div style="border: 1px solid black; padding: 5px;">Failed to properly dispose of dead animals. Specifically, decaying animal carcasses were observed stockpiled.</div>	Docket No. 2007-1976-AGR-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision November 6, 2007</i>																				
Base Penalty <input style="width: 100px;" type="text" value="\$10,000"/>																					
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td></td> <td style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">Major Moderate Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Release</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> Percent <input style="width: 50px;" type="text" value="10%"/> </div>			Harm				Major Moderate Minor		Release				Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	<input type="text"/>	x	<input type="text"/>
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Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.																				
Adjustment <input style="width: 100px;" type="text" value="\$9,000"/>																					
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Violation Events																					
Number of Violation Events <input style="width: 50px;" type="text" value="1"/>	<input style="width: 50px;" type="text" value="1"/> Number of violation days																				
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Violation Base Penalty <input style="width: 100px;" type="text" value="\$1,000"/>																					
One quarterly event is recommended.																					
Economic Benefit (EB) for this violation																					
Statutory Limit Test																					
Estimated EB Amount <input style="width: 100px;" type="text" value="\$0"/>	Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$1,800"/>																				
This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$1,800"/>																					

Economic Benefit Worksheet

Respondent: Postmus Dairy, L.L.C. dba Postmus Dairy
Case ID No. 35068
Reg. Ent. Reference No. RN102334836
Media: Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	12-Sep-2007	12-Sep-2007	0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove dead animals. Date required is the inspection date. Final date is the date the dead animals were moved.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance****\$500****TOTAL****\$0**

Screening Date 27-Nov-2007

Docket No. 2007-1976-AGR-E

PCW

Respondent Postmus Dairy, L.L.C. dba Postmus Dairy

Policy Revision 2 (September 2002)

Case ID No. 35068

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102334836

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s) TPDES General Permit No. TXG920299 Part V, Standard Permit Condition D and 30
Tex. Admin. Code § 321.36(c)

Violation Description

Failed to ensure that the control facility is designed, constructed, operated and maintained to contain all manure, litter and process water including runoff. Specifically, retention control structures ("RCS") No. 1 is designed to collect the barn water via pipe, at the time of the investigation the barn water pipe was not connected and RCS No. 1 was receiving wastewater from approximately half the production area.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

50 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the period of September 12, 2007 (date of inspection) to November 27, 2007 (screening date).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$44

Violation Final Penalty Total \$1,800

This violation Final Assessed Penalty (adjusted for limits) \$1,800

Economic Benefit Worksheet

Respondent Postmus Dairy, L.L.C. dba Postmus Dairy
Case ID No. 35068
Reg. Ent. Reference No. RN102334836
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	12-Sep-2007	31-Jul-2008	0.9	\$44	n/a	\$44

Notes for DELAYED costs

Estimated cost to operate and maintain all facilities. Date required is the inspection date. Final date is the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$44

Screening Date 27-Nov-2007

Docket No. 2007-1976-AGR-E

PCW

Respondent Postmus Dairy, L.L.C. dba Postmus Dairy

Policy Revision 2 (September 2002)

Case ID No. 35068

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102334836

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 321.40(d) and Tex. Water Code § 26.121(a)

Violation Description

Failed to contain a discharge from a Land Management Unit ("LMU"). Specifically, wastewater was observed discharging from LMU No. 5 at the heifer production site and into a freshwater pond south of RCS No. 3.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

50 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the period of September 12, 2007 (date of inspection) to November 27, 2007 (screening date).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$1,800

This violation Final Assessed Penalty (adjusted for limits) \$1,800

Economic Benefit Worksheet**Respondent:** Postmus Dairy, L.L.C. dba Postmus Dairy**Case ID No.** 35068**Reg. Ent. Reference No.** RN102334836**Media:** Water Quality**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	12-Sep-2007	30-Jun-2008	0.8	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to repair the irrigation equipment and ensure proper operation to prevent discharges from the LMU.
Date required is the inspection date. The final date is the projected date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$200

TOTAL

\$8

Screening Date 27-Nov-2007

Docket No. 2007-1976-AGR-E

PCW

Respondent Postmus Dairy, L.L.C. dba Postmus Dairy

Policy Revision 2 (September 2002)

Case ID No. 35068

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102334836

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 321.36(h)(2)

Violation Description

Failed to conduct weekly inspections and document/record the pond levels at
RCS No. 1.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix
NotesHuman health or the environment will or could be exposed to significant amounts of pollutants which
would not exceed levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

50 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,867

Violation Final Penalty Total \$1,800

This violation Final Assessed Penalty (adjusted for limits) \$1,800

Economic Benefit Worksheet**Respondent** Postmus Dairy, L.L.C. dba Postmus Dairy**Case ID No.** 35068**Reg. Ent. Reference No.** RN102334836**Media** Water Quality**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$2,600	12-Sep-2006	1-Nov-2007	2.1	\$267	\$2,600	\$2,867

Notes for AVOIDED costs

Estimated cost to conduct weekly inspections. Date required is the twelve month period prior to the investigation date. Final date is date of compliance.

Approx. Cost of Compliance \$2,600**TOTAL** \$2,867

Compliance History

Customer/Respondent/Owner-Operator:	CN602542193	Postmus Dairy, LLC	Classification: AVERAGE	Rating: 2.80
Regulated Entity:	RN102334836	POSTMUS DAIRY FARM	Classification: AVERAGE	Site Rating: 2.80
ID Number(s):	WASTEWATER AGRICULTURE	REGISTRATION	TXG015383	
	WASTEWATER AGRICULTURE	PERMIT	TXG920299	
Location:	2855 COUNTY ROAD 310, ERATH COUNTY		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	December 04, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 04, 2002 to December 04, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cheryl Thompson	Phone:	(817)588-5886	

Site Compliance History Components

- | | |
|----------------------------------------------------------------------------------------------|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- N/A
- B. Any criminal convictions of the state of Texas and the federal government.
- N/A
- C. Chronic excessive emissions events.
- N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|----|------------|----------|
| 1 | 06/18/2003 | (60324) |
| 2 | 11/05/2003 | (253952) |
| 3 | 03/31/2004 | (260803) |
| 4 | 10/25/2004 | (336975) |
| 5 | 07/29/2005 | (402224) |
| 6 | 11/04/2005 | (432868) |
| 7 | 01/05/2006 | (436624) |
| 8 | 03/29/2006 | (460006) |
| 9 | 01/03/2007 | (519658) |
| 10 | 11/16/2007 | (593918) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------|
| Date: | 05/30/2003 | (60324) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.42(j) | | |
| Description: | Failure to submit soil samples within the required time frame. | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.39(f)(28)(C) | | |
| Description: | Failure to take soil samples from each land management unit shown in the permit and pollution prevention plan. | | |
| Date: | 03/05/2004 | (260803) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.39(f)(23) | | |
| Description: | Failure to include all required information in the off-site manure and slurry records. | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.41(b) | | |
| Description: | Failure of the person named in the PPP as responsible for inspection and maintenance to conduct and document those activities. | | |
| Date | 11/22/2004 | (339424) | |
| Self Report? | NO | | Classification Moderate |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(C) | | |
| Description: | Failure to not apply wastewater when the ground was saturated | | |
| Self Report? | NO | | Classification Moderate |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(D) | | |
| Description: | Failure to manage irrigation practices to minimize ponding or puddling of wastewater | | |

	on the site		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(18)		
Description:	Failure to have structural damage to the pond liner evaluated by a NRCS engineer or a licensed professional engineer within 3 days of the damage		
Date	01/06/2006 (436624)		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.39(g)(2)		
Rqmt Prov:	PERMIT III.B.5		
Description:	Failure to maintain crops during the normal growing season in areas where animals are kept in the pastures. Failure to maintain crops during the normal growing season in areas where animals are kept in the pastures.		
Date	03/13/2006 (460006)		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.40(7)		
Description:	FAILURE TO OBSERVE THE REQUIRED BUFFER DISTANCE BETWEEN APPLICATION FIELDS AND WATERWAYS.		
Date	11/29/2006 (519658)		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.39(g)(2)		
Rqmt Prov:	PERMIT III.B.5		
Description:	Failure to maintain crops during the normal growing season in areas where animals are kept in the pastures. Failure to maintain crops during the normal growing season in areas where animals are kept in the pastures.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.39(e)		
Rqmt Prov:	PERMIT III.A.8(c)		
Description:	Failure to provide containment structures for contaminated runoff from manure/litter or sludge storage piles.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.38(g)(3)(E)		
Rqmt Prov:	PERMIT III.A.6(a)(2)		
Description:	Failure to maintain documentation capacity certifications were completed by a licensed Texas professional for each RCS prior to use.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
POSTMUS DAIRY, L.L.C. DBA
POSTMUS DAIRY
RN102334836**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1976-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Postmus Dairy, L.L.C. dba Postmus Dairy ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the appear before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy at 2855 County Road 310 in Erath County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 14, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Two Hundred Dollars (\$7,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The Respondent has paid Five Thousand Seven Hundred Sixty Dollars (\$5,760) of the administrative penalty and One Thousand Four Hundred Forty Dollars (\$1,440) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On September 12, 2007, a contracted rendering service removed the dead animals from the Facility; and
 - b. On November 1, 2007, the Respondent submitted documentation of the dead animal management practices implemented at the Facility and submitted documentation demonstrating that the weekly inspections of the retention control structures ("RCS") are being conducted.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to properly dispose of dead animals, in violation of 30 TEX. ADMIN. CODE § 321.36(1), as documented during an investigation conducted on September 12, 2007. Specifically, decaying animal carcasses were observed stockpiled.
2. Failed to ensure that the control facility is designed, constructed, operated and maintained to contain all manure, litter and process water including runoff, in violation of Texas Pollutant Discharge Elimination Systems ("TPDES") General Permit No. TXG920299 Part V, Standard

Permit Condition D and 30 TEX. ADMIN. CODE § 321.36(c), as documented during an investigation conducted on September 12, 2007. Specifically, RCS No. 1 is designed to collect the barn water via pipe, at the time of the investigation the barn water pipe was not connected and RCS No. 1 was receiving wastewater from approximately half the production area.

3. Failed to contain a discharge from a Land Management Unit ("LMU"), in violation of 30 TEX. ADMIN. CODE § 321.40(d) and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on September 12, 2007. Specifically, wastewater was observed discharging from LMU No. 5 at the heifer production site and into a freshwater pond south of the RCS No. 3.
4. Failed to conduct weekly inspections and document/record the pond levels at RCS No. 1, in violation of 30 TEX. ADMIN. CODE § 321.36(h)(2), as documented during an investigation conducted on September 12, 2007.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Postmus Dairy, L.L.C. dba Postmus Dairy, Docket No. 2007-1976-AGR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Repair the irrigation equipment at the LMU to ensure the integrity of the buffer zones and submit documentation demonstrating the remediation of the contaminated areas; and
 - ii. Repair and reconnect the barn pipe to RCS No. 1.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including

photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2. a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this

Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

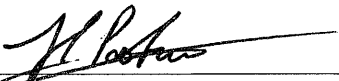
6/2/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

3/28/07
Date

HENK POSTMUS

Name (Printed or typed)
Authorized Representative of
Postmus Dairy, L.L.C. dba Postmus Dairy

OWNER

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

